



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Rulemaking on the Commission's Own  
Motion to Review the Telecommunications  
Public Policy Programs.

Rulemaking 06-05-028  
(Filed May 25, 2006)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON  
SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE REGARDING THE PUBLIC  
POLICY PAYPHONE PROGRAM AND PAYPHONE PROVIDER  
ENFORCEMENT PROGRAM**

**I. INTRODUCTION**

The Division of Ratepayer Advocates ("DRA") submits these Comments in response to the Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling issued July 13, 2007 ("Scoping Memo") regarding the Commission's Public Policy Payphone Program ("Quad-P") and Payphone Provider Enforcement Program ("PEP"). As a result of the Scoping Memo's conclusion that "[o]ther than generalized objections to reducing payphone availability, no party offered a specific, feasible proposal to remedy the deficiencies," the Scoping Memo only considered the California Payphone Association's ("CPA") recommendations to terminate the Quad-P and to combine the PPEP with the Commission's general enforcement program, including funding.<sup>1</sup>

At present, the record has not been established to allow the Commission's adoption of CPA's recommendations. CPA's recommendations are inadequate as they do not address the Commission's policy goals and objectives. The Scoping Memo's mischaracterization of the record as lacking feasible proposals to remedy the payphone programs overlooks the record established by other parties' previously submitted

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<sup>1</sup> Scoping Memo at 9.

comments. In DRA's Reply Comments submitted September 15, 2006 ("Reply Comments"), DRA specifically recommended that the Commission conduct a workshop to reassess the Quad-P in terms of its goals given the technological, regulatory, and market changes<sup>2</sup> and urged reform of the programs rather than complete termination. Therefore, before the Commission takes the drastic step of adopting one party's position of eliminating the Quad-P, it must address the record established by all of the parties.

DRA further reiterates that any action taken by the Commission regarding these programs must continue to carry out the Commission's policy objectives of supporting public health, safety, and welfare. To that end, a comprehensive review of the Quad-P in its current state would provide the Commission the requisite answers to remedy its perceived deficiencies and/or failures with respect to the Commission's own goals. Further, in possibly streamlining the PEP into the Commission's general enforcement program, the Commission must ensure that the PEP continues to provide necessary consumer protections in an effective and efficient manner.

## **II. THE PUBLIC POLICY PAYPHONE PROVIDER PROGRAM**

The Commission bears both a policy and administrative responsibility to ensure that the Quad-P accomplishes its adopted goals and objectives. In D.98-11-029, the Commission gave clearer direction about its policy priorities for locating payphones, including emergency aid gathering places and locations where residents cannot individually subscribe to telephone service.<sup>3</sup> The Commission also determined that the Quad-P should continue "as long as there is public health, safety, and welfare need...."<sup>4</sup> Contrary to CPA's statement in its initial comments that the Quad-P "provides no value at all,"<sup>5</sup> public policy payphones continue to provide a public service that cannot be

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<sup>2</sup> DRA, Reply Comments of the Division or Ratepayer Advocates on the Order Instituting Rulemaking on Telecommunications Public Policy Programs ("Reply Comments"), September 15, 2006, at 53.

<sup>3</sup> D.98.11.029, *mimeo*, at OP 1-10.

<sup>4</sup> *Id* at 12.

<sup>5</sup> CPA, Initial Comments and Proposals of California Payphone Association, July 28, 2006, at 13.

achieved through any other mechanisms. Therefore the Quad-P should be reformed, not eliminated.

**A. Public Purpose Payphones Continue to Provide an Important Public Service.**

The old technology of payphones is still important in an earthquake prone state like California. As a recent San Francisco Bay Guardian cover story (8/15/07) observed, after disasters like the 1989 Loma Prieta Earthquake and September 11, 2001 terrorist attacks, payphones remained in service, allowing members of the public to communicate with emergency personnel and loved ones, while wireless phones were silenced. Furthermore, in an emergency situation a payphone could mean the difference between life and death for someone requiring immediate medical attention, like during an asthma or heart attack. The need for Public Purpose payphones (“PP payphones”) becomes even more apparent if these emergency situations were to occur in rural areas where people may have to walk a considerable distance to call for help. For these reasons, the continued existence of PP payphones serves the interest of public health, safety, and welfare.

In addition to providing critical communication during emergency situations, dependence on payphones is likely to increase in poorer neighborhoods as a result of the deregulation of prices for basic service, and in rural areas where other modes of communication are of more limited availability. The Commission should also consider how PP payphones may provide for the public need in places like healthcare facilities, schools and childcare facilities, public gathering spots, playgrounds and recreation areas (especially in remote areas), and transportation hubs. Absent evidence to show that these needs no longer exist or that the marketplace will replace the PP payphones or fulfill the public policy objectives in public health, safety, and welfare, the Commission has no reasonable basis upon which to terminate the Quad-P.

**B. The Commission Should Conduct a Workshop or Study to Gather Systematic Data on the Status of the Quad-P.**

As DRA previously noted, the lack of systematic data on the public need for payphones in various geographical areas within California, or among different demographic and income groups, is precisely the reason why the Commission has an obligation to comprehensively review the Quad-P before it can conclude that its termination would be the appropriate remedy.<sup>6</sup> A workshop or study would be the best method to carry out the Commission's review of the program. In DRA's Reply Comments, we provided the Commission with a workshop proposal and recommended that the workshop address or consider the following issues:

- Reasons for the declining number of payphones;
- The prospects for the industry hitting a stabilization point in some core locations;
- The development of criteria for Commission priority locations of payphones (economically viable or Public Policy Payphones ("PPPs"));
- Defining basic procedures for installing or removing PPPs;
- Establishing a method for timely PPP reimbursement payments to Payphone Service Providers ("PSPs");
- Assessing costs of installing and maintaining PPPs; and
- Developing ways to cost-effectively tailor enforcement to correct problems and inappropriate customer treatment.<sup>7</sup>

The workshop or study would be an appropriate starting point from which to gather data to allow the Commission to map out the necessary reforms to the Quad-P.

**C. Administrative Reform**

Reforms to the Quad-P should also include a review of how the program is administered and to accordingly reform its administrative structure. A reason for the decline in designated PP payphones could be attributed to the application process. There is no procedure in effect for the placement of a PP payphone should an application get approved nor are there processes for funding PP payphones installation, operation, and

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<sup>6</sup> DRA, Reply Comments at 56.

<sup>7</sup> *Id* at 48-49.

maintenance over time. Moreover, PSPs have not been properly compensated by the Commission for the operation of their existing Quad-P phones. Thus, to remedy the Quad-P out of its “dismal state” the program must also undergo an administrative reform. Recommendations for workshops and other procedural proposals have been set forth more fully in DRA’s Reply Comments filed September 15, 2006.

### **III. PAYPHONE ENFORCEMENT PROGRAM**

The Payphone Enforcement Program (“PEP”) is currently in transition, making it difficult to pinpoint current problems or to make proposals for changes. DRA is not opposed to combining the PEP into the Commission’s general enforcement program. However, DRA recommends that modifications to the PEP must ensure that consumer protection remains effective and the administration is efficient.

To carry out these goals, DRA recommends that the Commission hold a workshop to allow the parties to address consumer protection safeguards, as well as administrative costs and funding mechanisms. DRA also recommends that the PEP be reviewed within 12-18 months after the changes are implemented and periodically thereafter. Review should be done by the Commission and the Payphone Service Providers Committee.

#### **A. Maximize Consumer Protection.**

DRA supports the establishment of a Commission customer complaint “800” number to report payphone problems. However, such a reporting system cannot substitute for Commission enforcement personnel. As DRA cautioned in its Reply Comments, any increase in cost effectiveness with the “800” number should not be at the expense of the Commission’s ability to track and investigate more systematic problems or trends in provider compliance.<sup>8</sup> For example, assume the Commission adopts a requirement that payphone providers must post an “800” number on their phones, and then some providers fail to do so. Affected users of those payphones would not be able to call an 800 number if the number is not posted, but the Commission would not know of the problem it is not also checking the phones to make sure the number is there.

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<sup>8</sup> DRA, Reply Comments at 60.

Therefore, field inspections should continue to be targeted to identify persistent problems. Further, inspections should be targeted at problems and abuses that PSPs may not readily or independently address, such as PSP practices that deceive or defraud payphone users, use deceptive routing, or fail to provide refunds. In the interest of consumer protection, the new system must be provided with sufficient inspection and support staff to enable it to track, identify, and correct violations.<sup>2</sup>

In order to track violations, the new PEP must include a method to tabulate the data collected from inspections and consumer complaints. The system should enable enforcement staff to easily identify any persistent patterns of abuse as well as identify the providers engaged in those abusive practices. If feasible, PEP data collection should also be designed to determine the patterns of economically viable payphone use throughout California to allow the Commission to identify areas where PP payphones are truly needed. As DRA previously recommended, the customer complaints via the “800” number should be integrated into the existing Oracle database, which currently tracks patterns of violations. This data would aid the Commission in carrying out its public interest policy objectives as well as provide PSPs information on profitable payphone locations.

#### **B. Minimize Administrative Costs.**

The transition to an effective and efficient PEP with minimal overhead costs is in the interests of both PSPs and consumers. At this time, the Commission and the parties have not had an opportunity to address all of the real and potential administrative costs associated with the PEP. Therefore, DRA recommends that the Commission hold a workshop to allow all parties to set forth costs and remedies to the PEP’s administration. Recommendations for workshops and other procedural proposals have been set forth more fully in DRA’s Reply Comments previously filed in this proceeding.

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<sup>2</sup> A detailed discussion of DRA’s proposals regarding consumer protection safeguards can be found in DRA Reply Comments at 57-61.

#### **IV. CONCLUSION**

For the foregoing reasons, DRA respectfully requests that the Commission adopt its recommendations.

Respectfully submitted,

/s/ HIEN C. VO

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September 6, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE REGARDING THE PUBLIC POLICY PAYPHONE PROGRAM AND PAYPHONE PROVIDER ENFORCEMENT PROGRAM**” in **R.06-05-028** by using the following service:

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Executed on the **6<sup>th</sup> day of September, 2007** at San Francisco, California.

/s/      REBECCA ROJO

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Rebecca Rojo

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